

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

Crl.Rev.Pet.No. 1048 of 2000()

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CRA.31/1996 of II ADDL. SESSIONS COURT, TRIVANDRUM  
ST.265/1993 of CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM  
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REVN. PETITIONER(S):

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B.MURALEEDHARAN @ MURALI, SOWPARNAKA  
JAWAHAR LANE, VELLAYAMBALAM, TRIVANDRUM.

BY ADV.

SRI.V.JAYAKUMAR  
SRI.VAKKOM N.VIJAYAN  
SRI.M.B.ANISH BABU

RESPONDENT(S):

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1.STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR,  
TRIVANDRUM.

2.I.CLEMENT, RETNA COTTAGE T.C.5/692,  
PEROORKADA, TRIVANDRUM.

ADV. SMT.A.SARO FOR R2

PUBLIC PROSECUTOR SRI.C.K.SURESHKUMAR.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD  
ON 23/03/2007, ALONG WITH CRRP NO. 1081 OF 2000 THE COURT ON  
THE SAME DAY PASSED THE FOLLOWING:

**K.HEMA, J.**

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**CRL.R.P.NO. 1048 of 2000**  
**&**  
**CRL.R.P.NO. 1081 OF 2000**  
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**Dated this the 23<sup>rd</sup> day of March, 2007**

**O R D E R**

The accused was convicted and sentenced by the Chief Judicial Magistrate's Court to pay a fine of Rs.3,00,000/- and in default to undergo simple imprisonment for three months under Section 138 of the Negotiable Instruments Act ('the Act', for short). In appeal, the said conviction and sentence were confirmed by the learned Sessions Judge. It is challenging the conviction and sentence that Crl.R.P.No.1048 of 2000 is filed by accused.

2. Against the sentence, the complainant filed revision before the Sessions Court. The said revision was also dismissed and hence, the complainant challenges the order in Crl.R.P.No. 1081 of 2000. Both these revisions are disposed of by this common order.

3. According to the prosecution, the accused had borrowed an amount of Rs.2,00,000/- from the respondent-complainant on 31.8.1991 on an understanding that the said amount will be paid back on or before 30.9.1991, and if it cannot be paid, the property covering an extent of 3 acres of rubber estate will be assigned in favour of the complainant. Since the accused did not execute the document or assigned the property and pay the amount, on demand, he executed a cheque, Exhibit P1 dated

5.10.1991. The cheque, on presentation, was dishonoured for insufficiency of fund and hence a notice, Exhibit P4 was issued, which was acknowledged by accused's wife, who was authorised to receive the registered letters, as per Exhibit P5. After complying with the legal requirements, a complaint was, therefore, filed against the revision petitioner, alleging offence under Section 138 of the Act.

4. On an analysis of evidence on record, both the courts found that the case set up by the complainant that Exhibit P1 cheque was drawn by the accused for the discharge of a debt is acceptable. Learned counsel for the revision petitioner(accused) vehemently contended that there is no service of notice on the accused. Even if it is admitted for argument sake that the notice is served on the wife, it cannot be said that the accused received the notice, since he has personally not received the notice.

5. This argument can only be rejected, since service on the authorised agent can be deemed to be service of notice. An attempt was made to establish by examining the wife of the accused as DW2 that she signs only as Mrs.Sasikala. Both the courts considered the matter in detail and a found that the letter was acknowledged by DW2 on behalf of the accused. On going through the judgments, I find that there is no perversity in such finding and I do not find any reason to interfere with the same.

6. Learned counsel for revision petitioner (accused) also argued that

defence plea was not considered by the court below in the proper perspective and hence an interference is warranted. The accused put forward a case that he was running a Cashew Factory and complainant was working as the Circle Inspector of Police at the same place. An acquaintance developed between them and when there was some problem in the Cashew Factory, accused used to help the complainant. While he was constructing a residential house, he also used to financially aid petitioner and allowed him to use his car as the Managing Partner of KEM Complex.

7. The accused used to keep signed blank cheques in the car in connection with the Company affairs, but the accused somehow managed to get such cheques and misused the same against the accused, it is contended. According to him, the complainant borrowed articles in the name of the accused and obtained money from various sources by using the name of the accused and when the accused demanded the money back, the complainant threatened him with dire consequences. No money is due to the complainant.

8. On going through the records and impugned judgment I find that it is not correct to say that the courts have not considered the disputed question. The evidence of the witnesses was analysed in detail and the court found it difficult to believe the case set up by the accused that the said cheques were stolen. Adequate reasons are shown in the judgment to

arrive at such findings. I do not find any reason to reverse such findings since those are only consistent with the evidence on record. Unless and until any perversity is pointed out in the findings, a revisional court cannot interfere.

9. Learned counsel for the revision petitioner also argued that the trial court illegally imposed a fine of Rs.3,00,000/- which he is not competent to impose. Learned Sessions Judge considered this argument and found that the sentence was imposed by the Chief Judicial Magistrate who is competent to impose any amount of fine as per Section 29(1) of the Code of Criminal Procedure. The decision reported in **Bhaskaran v. Balan** (1999(3) KLT 440) cited on the point was also distinguished in the light of the provision contained in Section 29(1) of the Code. The complainant has a case that the sentence is inadequate. Having found that accused is guilty, the court ought to have given more serious punishment. Considering various facts and circumstances of the case, I do not find any reason to enhance or reduce the sentence. The conviction and sentence can only be confirmed and the Revision Petitions are to be dismissed.

Both Criminal Revision Petitions are dismissed.

**K.HEMA, JUDGE**

vgs.